IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.278 of 2002
Date of decision : 16.03.2010

Jagdish Parkash

.... Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. Shiv Kumar, Advocate,
for the petitioner.

Mr. J.S. Bhullar, AAG, Punjab.

KANWALJIT SINGH AHLUWALIA, J. (Oral)

The present revision petition has been filed by Jagdish Parkash son of Uttam Ram who was named as an accused in case FIR No.59 dated 7.7.94 registered at Police Station Cannt. Ferozepur under Sections 420/468 and 471 IPC. The Court of Judicial Magistrate Ist Class, Ferozepur held the petitioner guilty vide judgment dated 20.07.1999 of offence under Sections 420, 467 and 471 IPC. The petitioner was sentenced to undergo RI for 2 years and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo RI for two months under Section 420 IPC. Similar sentence was imposed under Sections 467 and 471 IPC. The sentence awarded on three counts was ordered to run concurrently.

Aggrieved against the same, petitioner has filed an appeal. The Appellate Court while upholding the findings of conviction

recorded by the trial Court reduced the sentence awarded under Sections 420, 467 and 471 IPC to one year RI. However, sentence of fine and default clause was maintained.

In the present revision petition, petitioner has challenged his conviction and sentence awarded by the Lower Appellate Court vide judgment dated 8.01.2002.

Senior Divisional Manager of The New India Assurance Co, Ltd., Ferozepur City (hereinafter referred to as 'the Company') addressed a communication, Ex.P3, to the Senior Superintendent of Police, Ferozepur. It was stated therein that the Company was an undertaking of the Government of India and was engaged in the business of insuring vehicles, properties and household articles. Besides this, Company also issued Medi-claims and General Insurance policies. Agents / Development Officer employed by the Company issued cover note on receipt of premium. This cover note used to be valid till the proper policy was issued by the Company. Company received an information from one Vijay Kumar PW-1 that he had got his chetak scooter insured from the office of Kotkapura from the working agent of the Company. For the collection of policy, Inderjit Gupta PW-2 also approached the Company. Cover notes issued to Vijay Kumar and Inderjit Gupta were not issued by the Company and on those numbers, different cover notes were issued. Matter was assigned to Vigilance Detective Bureau who from their investigation came to know that the petitioner was using cover notes which he had got printed and were fictitious. On the basis of communication Ex.P-3, formal FIR Ex.PW11/A was registered. The

FIR was investigated and report under Section 173 Cr.P.C. was submitted.

The Court of Judicial Magistrate Ist Class, Ferozepur formulated charges against the petitioner. First charge stated that on 5.11.1990, 21.6.1991 and 25.7.1991, petitioner had cheated Inderjit Gupta, Vijay Kumar and Subhash Chander in Ferozepur Cantt. respectively by dishonestly inducing them to deliver cash amount of Rs.90/-, Rs.256/- and Rs.175/- respectively and thereby committed an offence punishable under Section 420 IPC. Second charge stated that cover notes, to be a valuable security, was issued by the petitioner with an intent to cheat and thereby committed an offence punishable under Section 467 IPC. On the similar allegations charge under Section 471 IPC was also framed. The petitioner pleaded not guilty and claimed trial.

Vijay Kumar PW-1 stated that in June 1991, he obtained an insurance policy from Jagdish Parkash accused for his Bajaj Scooter and he had paid Rs.256/-. Policy Form was Ex.P1. When his scooter suffered an accident, he went to insurance office to receive the insured amount. He learnt that the petitioner was not the approved agent of the Company and that it had not issued any cover note. He further identified signatures of the petitioner on fake cover note Ex.P1. PW-2 Inderjit Gupta has stated that he was posted in Post Office Ferozepur. He had got his moped insured from the petitioner and he paid Rs.90/-. This witness also deposed regarding issuance of cover note by the petitioner. Shiv Kumar Kapoor PW-3 stated that petitioner was not posted / employed as agent by the Company. J.S.

Chopra PW-4, Deputy Manager, Regional Office, New India Assurance Company deposed that communication Ex.P3 was sent by him for registration of FIR. PW-5 S.I. Balbir Singh had partly investigated the case. Iqbal Singh PW-6 was the Investigating Officer. He proved various facets of the investigation. Subhash Chander PW-8 stated that on 25.7.1991 he purchased an insurance policy from the petitioner for his car No.PYL-426. Petitioner had issued a cover note and received Rs.175/-. This witness had conducted investigation on behalf of New India Assurance Company. In cross-examination, this witness stated that he was not known to the accused earlier and he was not aware of any previous statement recorded by the police.

Counsel for the petitioner has submitted that in the present case, three cover notes were issued. Ex.P1 cover note pertained to Vijay Kumar PW-1. Remaining two cover notes were photostat copies and the same were not admissible in evidence. It is further stated that no handwriting expert was examined to say that even cover note Ex.P1 was filled by the petitioner. These arguments may look attractive at the first instance. Both the Courts below have relied upon the testimony of PW-1 Vijay Kumar, PW-2 Inderjit Gupta and PW-8 Subhash Chander. They have stated that they have given the amount and received the cover notes from the petitioner. These cover notes were later found to be fake. They were not printed by the Company. Non-examination of the handwriting expert will not be material as the witnesses have stated that they handed over the amount to the petitioner who had filled the form in their presence. It

was verified by the Company that cover notes were not printed at their instance. Admittedly, petitioner had issued cover notes and had obtained pecuniary advantage. Thus, he was cheating the public at large and issued cover notes which were fake.

Counsel further states that the cover notes were issued in the year 1991 and FIR was registered after four years. Delay in the present case is not material as the kind of crime perpetuated by the petitioner was unearthed after four years.

Counsel for the petitioner, at this stage, has stated that the learned Lower Appellate Court has reduced the sentence from 2 years to 1 year RI considering the fact that petitioner was aged about 65 years. Counsel states that though the learned Appellate Court had pronounced the judgment in year 2002 petitioner is now aged about 73 years and this Court may also consider reduction in the sentence. Long pendency of the case is one mitigating circumstance but receipt of money by issuing cover notes which are fake is aggravating circumstance. To balance the mitigating and aggravating circumstances, this Court is of the view that ends of justice will be fully met, in case sentence awarded upon the petitioner is reduced from 1 year RI to 8 months RI.

With these observations, present revision petition is disposed of. However, sentence of fine and default clause is maintained.

(KANWALJIT SINGH AHLUWALIA)
JUDGE

16-03-2010
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